

IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION

RODNEY ALVERSON, #132431,	)	
	)	
Plaintiff,	)	
	)	
v.	)	CIVIL ACTION NO. 2:09-CV-81-TMH
	)	[WO]
	)	
JOHN CUMMINS, et al.,	)	
	)	
Defendants.	)	

**RECOMMENDATION OF THE MAGISTRATE JUDGE**

**I. INTRODUCTION**

This case is before the court on a 42 U.S.C. § 1983 complaint filed by Rodney Alverson [“Alverson”], a state inmate, challenging various conditions of confinement and actions taken against him during his confinement at the Easterling Correctional Facility. On July 29, 2009, Alverson filed a motion to show cause why a motion for preliminary injunction should not issue, *Court Doc. No. 58*, which the court construed as a motion for preliminary injunction. *Court Doc. No. 65 - Order of August 5, 2009*. In this motion, the plaintiff seeks issuance of a preliminary injunction requiring provision of virtually unlimited access to paper, copies and other supplies he deems necessary for proceeding in his legal actions. *Court Doc. No. 58*.

On September 4, 2009, the correctional defendants filed a response to Alverson’s most recent request for issuance of a preliminary injunction, supported by relevant

evidentiary materials, in which they assert correctional officials have provided Alverson ample means to pursue his claims before this and any other court. *Correctional Defendants' September 4, 2009 Response - Court Doc. No. 84.*

## II. STANDARD OF REVIEW

The decision to grant or deny a preliminary injunction “is within the sound discretion of the district court....” *Palmer v. Braun*, 287 F.3d 1325, 1329 (11<sup>th</sup> Cir. 2002). This court may grant a preliminary injunction only if Alverson demonstrates each of the following prerequisites: (1) a substantial likelihood of success on the merits; (2) a substantial threat irreparable injury will occur absent issuance of the injunction; (3) the threatened injury outweighs the potential damage the requested injunction may cause the non-moving parties; and (4) the injunction would not be adverse to the public interest. *Palmer*, 287 F.3d at 1329; *McDonald's Corp. v. Robertson*, 147 F.3d 1301, 1306 *Cate v. Oldham*, 707 F.2d 1176 (11<sup>th</sup> Cir. 1983); *Shatel Corp. v. Mao Ta Lumber and Yacht Corp.*, 697 F.2d 1352 (11<sup>th</sup> Cir. 1983). “In this Circuit, ‘[a] preliminary injunction is an extraordinary and drastic remedy not to be granted unless the movant clearly established the “burden of persuasion” as to the four requisites.” *McDonald's*, 147 F.3d at 1306; *All Care Nursing Service, Inc. v. Bethesda Memorial Hospital, Inc.*, 887 F.2d 1535, 1537 (11<sup>th</sup> Cir. 1989) (a preliminary injunction is issued only when “drastic relief” is necessary); *Texas v. Seatrain Int'l, S.A.*, 518 F.2d 175, 179 (5<sup>th</sup> Cir. 1975) (grant of preliminary injunction “is the exception rather than the rule,” and movant must clearly carry the burden

of persuasion). The moving party's failure to demonstrate a "substantial likelihood of success on the merits" may defeat the party's claim, regardless of the party's ability to establish any of the other elements. *Church v. City of Huntsville*, 30 F.3d 1332, 1342 (11<sup>th</sup> Cir. 1994); *see also Siegel v. Lepore*, 234 F.3d 1163, 1176 (11<sup>th</sup> Cir. 2000) (noting that "the absence of a substantial likelihood of irreparable injury would, standing alone, make preliminary injunctive relief improper"). "The chief function of a preliminary injunction is to preserve the status quo until the merits of the controversy can be fully and fairly adjudicated." *Northeastern Fl. Chapter of Ass'n of Gen. Contractors of Am. v. City of Jacksonville, Fl.*, 896 F.2d 1283, 1284 (11<sup>th</sup> Cir.1990)." *Suntrust Bank v. Houghton Mifflin Co.*, 268 F.3d 1257, 1265 (11<sup>th</sup> Cir. 2001).

### III. DISCUSSION

Turning to the first prerequisite for issuance of preliminary injunctive relief, the court finds that Alverson has failed to demonstrate a substantial likelihood of success on the merits of his claims. Alverson likewise fails to demonstrate a substantial threat that he will suffer an irreparable injury absent issuance of a preliminary injunction. Specifically, the court notes that Alverson has filed all requisite documents in the instant cause of action and also recently filed a second lawsuit with this court consisting of a twenty-seven (27) page complaint. *Alverson v. Allen, et al.*, 2:09-CV-780-ID-TFM (M.D. Ala.). The third factor, balancing potential harm to the parties, weighs more heavily in favor of the defendants as interference with the daily operation of the prison system regarding the

access provided inmates to legal materials would unfairly impede the ability of correctional officials to properly manage the system. Finally, the public interest element of the equation is a neutral factor at this juncture. Thus, Alverson has failed to meet his burden of demonstrating the existence of each prerequisite necessary to warrant issuance of a preliminary injunction.

#### **IV. CONCLUSION**

Accordingly, it is the RECOMMENDATION of the Magistrate Judge that:

1. The motion for preliminary injunction filed by the plaintiff on July 29, 2009 (Court Doc. No. 58) be DENIED.

2. This case be referred back the undersigned for additional proceedings.

It is further

ORDERED that on or before September 25, 2009 the parties may file objections to the Recommendation. Any objection must specifically identify the findings in the Recommendation objected to. Frivolous, conclusive or general objections will not be considered by the District Court. The parties are further advised that this Recommendation is not a final order of the court and, therefore, it is not appealable. Failure to file written objections to the proposed findings in the Recommendation shall bar the party from a de novo determination by the District Court of issues addressed in the Recommendation and shall bar the party from attacking on appeal factual findings in the report accepted or adopted by the District Court except upon grounds of plain error or manifest injustice.

*Nettles v. Wainwright*, 677 F.2d 404 (5<sup>th</sup> Cir. 1982); *see Stein v. Reynolds Securities, Inc.*, 667 F.2d 33 (11<sup>th</sup> Cir. 1982); *see also Bonner v. City of Prichard*, 661 F.2d 1206 (11<sup>th</sup> Cir. 1981, en banc), adopting as binding precedent all decisions of the former Fifth Circuit issued prior to September 30, 1981.

Done this 9th day of September, 2009.

/s/Terry F. Moorer  
TERRY F. MOORER  
UNITED STATES MAGISTRATE JUDGE